



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 21 April 2020  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***Mahlangu & Another v Minister of Police (1393/2018) [2020] ZASCA 44 (21 April 2020)***

Today the Supreme Court of Appeal upheld the appeal of Mr J.E. Mahlangu and the representative of the estate of the late Mr P.J. Mtsweni, against a decision of the full court of the High Court, Gauteng Division, Pretoria.

Mr Mahlangu and Mr Mtsweni (the plaintiffs) claimed damages from the Minister of Police (the Minister) for allegedly having been unlawfully arrested on 29 May 2005, assaulted and thereafter detained until 10 February 2006, when the Director of Public Prosecutions withdrew the charges against them and they were released. The trial court (Mabuse J) found that Mr Mahlangu and Mr Mtsweni had been arrested unlawfully, that Mr Mahlangu was thereafter tortured by the police resulting in him making an inadmissible confession in which he implicated himself and Mr Mtsweni, and that they were detained unlawfully until their first appearance before a magistrate's court on 31 May 2005. The trial court awarded damages in favour of Mr Mahlangu in the sum of R90 000 and in favour of Mr Mtsweni in the sum of R50 000. It declined to award any damages in respect of their detention from the time of their first appearance before the magistrate court until their release on 10 February 2006

(their judicial detention), as such detention was pursuant to various Magistrate's Court orders and not caused by their unlawful arrest.

The plaintiffs' subsequent appeal to the full court for damages for the period of their judicial detention was unsuccessful. The full court (Kollapen J, Molopa-Sethosa and Ranchod JJ concurring) concluded that the plaintiffs failed to prove that the police were responsible for their judicial detention, and that they, in any event, also had a constitutional right to challenge their detention, which they failed to do.

The Supreme Court of Appeal (Koen AJA, Cachalia JA and Dolamo AJA concurring) concluded that the investigating officer's inclusion of the confession in the police docket, knowing that it would not be admissible in evidence, with the intention that it be relied upon to secure an order for the plaintiffs' further detention at their first court appearance, constituted a separate delict. That delict was the legal cause of the plaintiffs' detention until their second court appearance on 14 June 2005, when they were reasonably expected to have applied to be released on bail, which on the probabilities would have been ordered, but failed to do so. The damages in respect of their detention from 31 May 2005 until 14 June 2005 was assessed to be R100 000. The order of the full court was accordingly set aside with costs, and the Minister ordered to pay Mr Mahlangu the sum of R190 000 and the estate of Mr Mtsweni R150 000.

Van der Merwe JA, in a dissenting judgment, with whom Petse DP in a separate judgement concurred, would also uphold the appeal, but direct that the Minister compensate the plaintiffs for the full period of their judicial detention until 10 February 2006.